

REMARKS/ARGUMENTS

Claims 1, 3, 6-8, 10-16, 18, 20, 22, 24, 27, 28, 29, 31-37, 39, 41, 43, and 46 remain pending. Claims 4-5, 9, 17, 19, 21, 25-26, 30, 38, 40, 42, and 45 have been previously canceled. No new matter has been added.

Remarks Concerning Rejections Under 35 U.S.C. § 103(a)

Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan

On page 2 of the March 7, 2006 Office Action, the Examiner rejected claims 1, 3, 10, 15-16, 20, 22, 24, 31, 36-37, 43, and 46 under 35 U.S.C. 103(a) as being unpatentable over Hymel U.S. Patent No. 6,353,382 ("Hymel") in view of Seeger U.S. Patent Application Publication 2003/0022684 ("Seeger") and further in view of Dorenbosch et al. U.S. Patent No. 6,023,230 ("Dorenbosch"). Applicant assumes that the Examiner mistakenly omitted Burgan et al. U.S. Patent No. 6,351,656 ("Burgan") from the list on page 2, as Burgan is specifically mentioned in the Examiner's rejection to these claims on page 4 of the Office Action. Thus, Applicant will address this reference as well.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See MPEP 2143.01. Second, there must be a reasonable expectation of success. See MPEP 2143.02. Finally, the prior art reference(s) must teach or suggest all of the claim limitations. See MPEP 2143.03. The teaching or suggestion to make the claimed combinations and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. See MPEP § 2142. In the present case, the Examiner failed to meet this burden.

Independent Claims 1 and 22 (as well as Claim 43) specifies that the priority message is a "priority Amber Alert message." In one embodiment, the present application is essentially directed to immediately displaying an Amber Alert message having a name, a vehicle

identification, a time, and a location, on the display of a plurality of wireless devices before any other message is displayed on the displays of the plurality of wireless devices. This immediate display can be critical to the survival of children and other abductees. These claims specify a particular way to accomplish this immediate display. In particular, Claim 1 requires (1) receiving a priority Amber Alert message from an authority, wherein the authority comprises a law enforcement authority, and wherein the priority Amber Alert message comprises an abductee name, a vehicle identification, a time, and a location; (2) assigning a priority identifier to the priority Amber Alert message; (3) transmitting the priority Amber Alert message to the plurality of wireless devices, wherein the priority identifier will cause the priority Amber Alert message to receive priority status once received by the plurality of the wireless devices; and, (4) compelling the immediate displaying of the priority Amber Alert message on the displays of the plurality of wireless devices before any other message is displayed on the displays of the plurality of wireless devices, comprising the steps of providing for assigning the priority message to a priority channel within the plurality of wireless devices and providing for displaying the priority message received on the priority channel of the plurality of wireless devices, on the display of the plurality of wireless devices immediately upon receipt by the plurality of wireless devices. Claims 22 and 43 have similar limitations for a system and a wireless device.

Hymel in view of Seeger and Dorenbosch and Burgan does not disclose or teach each and every limitation of current Claim 1 (or Claims 22 or 43). Applicant believes that any such combination of references would be improper and would not support a prima facie case of obviousness, as will be explained below.

It is apparent the Examiner would have to take isolated features from each of the cited references, and would have to use the claims of the present application as a template. Such hindsight reconstruction is improper. It is well-recognized that the claimed invention cannot be used as an instruction manual or template to piece together the teachings of the prior art in an attempt to render the claimed device obvious. *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992); *Fine*, 837 F.2d at 1075 (“one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.”)

According to Hymel, it is directed to a method for controlling outbound messages in a two way communications system in which subscribers pay for received messages. Hymel does

not define the types of messages which should be indicated as “priority” messages, although it refers to priority messages in the context of other generic types of messages, such as numeric messages, messages from identified sources, and messages which include identified words. (Col. 4, lines 59-62). It appears that Hymel is only interested in reducing unwanted message traffic to reduce the expense associated with unwanted messages. Seeger discloses a system for communicating to individuals located in an area without radio and/or television signals, information such as NOAA warnings and Amber Alert situations. However, Seeger does not disclose informing of any specific Amber Alert information, does not assign any priority to such message, and does not have the information appear on any receiving device immediately and before other messages are displayed on a display of such a receiving device. Dorenbosch merely assigns priority to a message channel. Burgan simply teaches a device for notifying a user of the wireless device of a priority message.

The combination is improper because there is no motivation or incentive in the prior art to combine these references in a manner that would be required to establish a prima facie case. See *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1785 (Fed. Cir. 1995). Furthermore, Applicant asserts that it would not be obvious to one of ordinary skill in the art to combine four different references, as this is excessive. Thus, it is clearly not obvious to combine these references.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). Here, there is absolutely no incentive in the cited references to combine the references in a manner that would be required to establish a prima facie case. When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 U.S.P.Q.2d 1788 (Bd. Pat. App. & Inter. 1986).

Claim 1 specifically requires (1) receiving a priority Amber Alert message from a law enforcement authority, including an abductee name, a vehicle identification, a time, and a

location; (2) assigning a priority identifier to the priority Amber Alert message; (3) transmitting the priority Amber Alert message to the plurality of wireless devices, wherein the priority identifier will cause the priority Amber Alert message to receive priority status once received by the plurality of the wireless devices; and, (4) compelling the immediate displaying of the priority Amber Alert message on the displays of the plurality of wireless devices before any other message is displayed on the displays of the plurality of wireless devices, comprising the steps of providing for assigning the priority message to a priority channel within the plurality of wireless devices and providing for displaying the priority message received on the priority channel of the plurality of wireless devices, on the display of the plurality of wireless devices immediately upon receipt by the plurality of wireless devices. Claims 22 and 43 have similar limitations for a system and a wireless device. There is no suggestion or motivation recited in the references to combine the five (5) cited references in a manner to achieve this invention. Even in combination, these references do not disclose or teach each and every limitation of Claims 1, 22 and 43. Thus, Applicant believes that Claims 1, 22 and 43 are in condition for allowance.

Several of the dependent claims include features which are also not shown in any of the above or other cited references, and therefore Applicant traverses the rejections related to many of the dependent claims. However, because all of the pending dependent Claims 3, 10, 15-16, 20, 22, 24, 31, 36-37, 43, and 46 depend from respective Claims 1, 22, and 43, Applicant believes that these Claims are novel and non-obvious as well as explained above, and are in condition for allowance.

Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan

On page 5 of the March 7, 2006 Office Action, the Examiner rejected claims 6-8 and 26-29 under 35 U.S.C. 103(a) as being unpatentable over Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan. Because these claims all depend from Claims 1 and 22 and include additional features not shown in the above references, in view of the forgoing arguments, Applicant believes these claims are novel and non-obvious as explained above. Thus, Applicant argues these claims are in condition for allowance.

Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan

On page 6 of the March 7, 2006 Office Action, the Examiner rejected claims 11-12 and 32-33 under 35 U.S.C. 103(a) as being unpatentable over Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan. Because these claims all depend from Claims 1 and 22 and include additional features not shown in the above references, in view of the forgoing arguments, Applicant believes these claims are novel and non-obvious as explained above. Thus, Applicant argues these claims are in condition for allowance.

Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan and further in view of Hymel II

On page 7 of the March 7, 2006 Office Action, the Examiner rejected claims 13-14 and 34-35 under 35 U.S.C. 103(a) as being unpatentable over Hymel in view of Seeger and further in view of Dorenbosch and further in view of Burgan and further in view of Hymel et al. U.S. Patent No. 6,157,814 ("Hymel II"). Because these claims all depend from Claims 1 and 22 and include additional features not shown in the above references, in view of the forgoing arguments, Applicant believes these claims are novel and non-obvious as explained above. Further, as argued above, Applicant argues it would not be obvious to one of ordinary skill in the art to combine a total of five different references in order to achieve the results of the rejected claims. This is excessive effort, not an obvious combination. Thus, Applicant argues these claims are in condition for allowance.

Hymel in view of Alperovich in view of Seeger

On page 7 of the March 7, 2006 Office Action, the Examiner rejected claims 20 and 41 under 35 U.S.C. 103(a) as being unpatentable over Hymel in view of Alperovich et al. U.S. Patent No. 6,119,014 ("Alperovich") in view of Seeger.

As discussed above, Hymel is directed to a method for controlling outbound messages in a two way communications system in which subscribers pay for received messages. Hymel does not define the types of messages which should be indicated as "priority" messages, although it refers to priority messages in the context of other generic types of messages, such as numeric messages, messages from identified sources, and messages which include identified words. (Col.

4, lines 59-62). It appears that Hymel is only interested in reducing unwanted message traffic to reduce the expense associated with unwanted messages. Alperovich sorts and generally displays messages by priorities indicated. Alperovich only discloses messages such as "to do" messages (i.e. - "buy milk on the way home") and a pick up a passenger in a taxi cab setting message. Alperovich does not disclose or suggest law enforcement type messages, safety messages, or messages which do not directly affect the recipient. Seeger discloses a system for communicating to individuals located in an area without radio and/or television signals, information such as NOAA warnings and Amber Alert situations. However, Seeger does not disclose informing of any specific Amber Alert information, does not assign any priority to such message, and does not have the information appear on any receiving device immediately and before other messages are displayed on a display of such a receiving device.

As discussed above, the combination of Hymel, Alperovich and Seeger is improper because there is no motivation or incentive in the prior art to combine these references in a manner that would be required to establish a prima facie case. See *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1785 (Fed. Cir. 1995).

Because Claims 20 and 41 depend from Claims 1 and 22 and include additional features not shown in the above references, in view of the forgoing arguments, Applicant believes these claims are novel and non-obvious as explained above. Thus, Applicant argues these claims are in condition for allowance.

Hymel in view of Alperovich in view of Seeger and further in view of Burgan

On page 8 of the March 7, 2006 Office Action, the Examiner rejected claims 18 and 39 under 35 U.S.C. 103(a) as being unpatentable over Hymel in view of Alperovich et al. U.S. Patent No. 6,119,014 ("Alperovich") in view of Seeger and further in view of Burgan. As discussed above, the combination of Hymel, Alperovich, and Seeger does not include all the limitations of independent Claims 1 and 22, and thus of dependent claims 18 and 39. Further, the Examiner has failed to point to anything specific which would make it obvious to one of ordinary skill in the art to combine these references. Applicant again argues that it would not be obvious to combine a total of four different references in order to achieve all of the limitations of the rejected claims. In view of the forgoing arguments, Applicant believes these claims are

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novel and non-obvious as explained above. Thus, Applicant argues these claims are in condition for allowance.

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CONCLUSION

In view of the above remarks, Applicant respectfully submits that Claims 1, 3, 6-8, 10-16, 18, 20, 22, 24, 27, 28, 29, 31-37, 39, 41, 43, and 46 are in condition for allowance and requests timely notification of same.

Respectfully submitted,

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